IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No. 1826 of 1984
With
FIRST APPEAL No. 1827 of 1984
To
FIRST APPEAL No. 1831 of 1984

For Approval and Signature:

HONOURABLE MR.JUSTICE R.S.GARG

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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GUJ.STATE ROAD TRANSPORT CORPN. - Appellant(s)
Versus
DHIRU CHANA & 2 - Defendant(s)

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Appearance :
MS MAYA DESAI for Appellant(s) : 1,
MR JD AJMERA for Defendant(s) : 1,
NOTICE SERVED for Defendant(s) : 2 - 3.

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CORAM : HONOURABLE MR.JUSTICE R.S.GARG

Date : 14/06/2007

ORAL JUDGMENT

1. Gujarat State Road Transport Corporation, being aggrieved by the Judgment and Award jointly made

by the learned Motor Accident Claims Tribunal (Main), Rajkot in 18 cases, has filed these six appeals arising out of Claim Case No.419 of 1982 (Dhirubhai Chanabhai Vs. GSRTC), Claim Case No.367 of 1982 (Madhuben Vajubhai, minor through Vajubhai Bachubhai Vs. GSRTC), Claim Case No.369 of 1982 (Jiviben Kadva Vs. GSRTC), Claim Case No.318 of 1982 (Ghusalal Dharamshibhai Vs. GSRTC), Claim Case No.366 of 1982 (Vajubhai Bachubhai Vs. GSRTC), Claim Case No.368 of 1982 (Labhuben Nanjibhai Vs. GSRTC). In other 12 matters, no appeals have been filed probably on the ground that the amount awarded was too small.

2. The facts necessary for disposal of the present six appeals are that the original claimants and other 10 persons were in the State Transport Bus No.GRA-8200 which was driven by the driver of Gujarat State Road Transport Corporation, the Conductor was also in the Vehicle. Another Bus No.GHT-4917 also belonging to the Gujarat State Road Transport Corporation, coming from the other-side dashed

against Bus No.GRA-8200, as a result of the dash, collision and accident, six contesting respondents and other 12 suffered number of injuries. Present six claimants / contesting respondents had suffered fractures shortening of the limbs and permanent disablement ranging between 10 to 50%. 18 different Claim Petitions claiming different amounts were filed. The driver of the offending vehicle pleaded no fault but after recording evidence and hearing the parties, learned tribunal held that the driver of the ST Bus No.GTH-4917 was rash and negligent, he led to the accident and as such, the driver was held liable. The Transport Corporation was also held liable for the acts and actions of its employee.

3. Learned counsel for the appellant in each of the appeal submitted that looking to the nature of the injuries and percentage of the permanent partial disablement, the amount awarded in favour of each of the claimant, is on the higher side. After taking me through the evidence, reports of the Doctors and

the findings recorded by the tribunal, it was submitted that the claim could not be awarded to the extent it has been awarded.

4. Mr.J.D. Ajmera, learned counsel for the respondents in First Appeal Nos.1826, 1827, 1828 and 1831 of 1984, made submissions that from the nature of the injuries, it would clearly appear that the original claimants have not paid in excess, while, in fact, they were entitled to something more. In para 64 to 67, the learned tribunal has referred to the nature of the injuries suffered by Dhiru Chana, claimant of Claim Case No.419 of 1982. From the injury report, it would clearly appear that he suffered injuries on the right eye, nose, right shoulder and right chest. Dr.Rekhaben Gosalia had clearly proved that he had suffered total loss of vision of right eye and the permanent partial disability was 40%. Taking into consideration the nature of the injuries and loss of vision of one eye, I am unable to hold that award for an amount of Rs.73,600=00 would suffer with the vice of excessiveness. In relation to Madhuben

Vajubhai (Minor), claimant of Claim Case No.367 of 1982, though the claim was for Rs.40,000=00, but the tribunal had allowed a sum of Rs.20,600=00 only. The minor had suffered fracture of the shaft of the left femur and hip abduction was 10 degree with half centimeter shortening. If the girl of 2 years suffers all these permanent disability, then not only her future is affected but even her future prospects, marriage prospects etc. are also affected. The tribunal, in the opinion of this Court, was not unjustified in awarding sum of Rs.20,600=00 under different heads.

5. In case of Jiviben Kadva, claimant of Claim Case No.369 of 1982 the learned tribunal observed and found that she suffered fracture of the left forearms and the Doctor has testified that there are various scars on her body. Doctor has further testified that because of the injuries suffered, the said claimant has suffered permanent partial disability to the extent of 22%. In such a case, the tribunal had awarded a sum of Rs.29,480=00 under the different

heads which includes Rs.15,000=00 under the head of pain, shock and suffering and a sum of Rs.2000=00 towards medical expenses, conveyance, special diets etc. I do not think that Jiviben Kadva has been awarded anything in excess.

6. So far as the case of Ghusalal Dharamshi Bhalala, claimant of Claim Case No.318 of 1982 is concerned, the tribunal has found that he had sustained fracture of the right knee joint along with some other injuries. The tribunal also found that his monthly income was Rs.665=00 and he had to remain on leave for almost about two months. The tribunal also found that the permanent partial disability was 10%. In the opinion of this Court, the award of Rs.15,000=00 under the head of pain shock and suffering and Rs.2000=00 towards the medical expenses cannot be said to be on the excessive side. Dr.Dholakia found that Ghusalal suffered permanent partial disability to the extent of 10%; he would be entitled to a sum of Rs.11,880=00 towards the future loss, award of Rs.30,220=00 cannot be said to

excessive.

7. Vajubhai Bachubhai, claimants of Claim Case No.366 of 1982 had claimed a sum of Rs.40,000=00 but the court had awarded a sum of Rs.27,240 only. The tribunal found that he sustained injuries on the right eye, right jaw and other parts of the body and on radiology examination, it was found that he had suffered fracture of the clavicle and right forearm. Dr.Dholakia, has certified that he had suffered permanent disability to the extent of 15%. The tribunal had awarded a sum of Rs.15,000=00 towards the pain, shock and suffering and a sum of Rs.2000=00 towards medical expenses. This amount cannot be said to be excessive. The tribunal had also awarded a sum of Rs.700=00 at the rate of Rs.350=00 per month for the period of two months for which he could not do labour work. The tribunal had awarded a sum of Rs.9440=00 towards future loss, which, in the opinion of this Court, cannot be said to be excessive. The Court had taken a right view.

8. Labhuben Kanjibhai, Claimant of Claim Case No.368 of 1982 had claimed a sum of Rs.30,000=00. From the evidence, it would appear that he had suffered fracture of right hand, she had suffered permanent partial disability to the extent of 15%. The tribunal, in the opinion of this Court, had rightly awarded a sum of Rs.15,000=00 under the head of pain, shock and suffering, loss of amenities of life and Rs.2000=00 under the head of medical expenses etc. The tribunal was also justified in awarding a sum of Rs.5328=00 towards future loss of income.

9. After going through the entire evidence available on the records and the injury reports, including the reports of Dr.Dholakia that the patients / claimants / injured had suffered permanent partial disability, I am unable to hold that the learned tribunal was unjustified in making the award in favour of those claimants.

10.The learned tribunal had given cogent reasons for

granting the compensation and did not err in allowing the claim petition to the extent as granted by the learned court below.

11. I find no reason to interfere. All the appeals deserve to and are accordingly dismissed. Interim relief, if any, is vacated. No costs.

(R.S. GARG, J.)

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